36335
EB

SERVICE DATE – MAY 19, 2008

This decision will be printed in the bound volumes of
the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42095

KANSAS CITY POWER & LIGHT COMPANY
v.
UNION PACIFIC RAILROAD COMPANY

Decided: May 16, 2008

The Board finds that the rates for the challenged movements all exceed 180% of the variable cost of providing service. Pursuant to a stipulation between the parties, a maximum reasonable rate limit of the 180% of variable cost is prescribed until the end of 2015 and reparations (with interest) are ordered. The unreasonable practice claim is denied.

BY THE BOARD:

This case involves a challenge by Kansas City Power & Light Company (KCPL) to the reasonableness of the rates charged by Union Pacific Railroad Company (UP) to transport coal from the Powder River Basin (PRB) in Wyoming to KCPL's Montrose Generating Station (Montrose) near Ladue, MO. Ordinarily, this type of rail rate case involving regular unit-train movements of coal to a utility would be adjudicated under the Board's stand-alone cost methodology.[1] In this case, however, UP stipulated that the maximum lawful rate should be set at the statutory floor for regulatory relief set forth in 49 U.S.C. 10707: the level at which the revenue-to-variable-cost ratio (R/VC ratio) equals 180%.

In Major Issues in Rail Rate Cases, STB Ex Parte No. 657 (Sub-No. 1) (STB served Oct. 30, 2006), pet. for review docketed, No. 06-1374, et al. (D.C. Cir. Nov. 13, 2006) (Major Issues), we dramatically streamlined the R/VC calculation by precluding movement-specific adjustments to the variable cost figures produced by the Uniform Rail Costing System (URCS) prescribed in Adoption of the Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Costing Purposes, 5 I.C.C.2d 894, 899 (1989). Notwithstanding that new policy, each party has argued for a few movement-specific adjustments to URCS in this case. The propriety of each proposed adjustment is challenged by the opposing party. We will

[1] See Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520 (1985) (Guidelines), aff'd sub nom. Consolidated Rail Corp. v. United States, 812 F.2d 1444 (3d Cir. 1987).

not depart from the policy announced in Major Issues, however. Both parties participated in that rulemaking,[2] and neither party objected at the appropriate time (before the Board and in the pending judicial review) to application of the new policy to this case. Accordingly, we will not debate the merits of the particular selective adjustments advocated by these parties, but rather adhere to our stated policy to rely on unadjusted URCS variable cost calculations.

In this decision, we resolve the technical disputes over how to determine the 2006 URCS variable costs for the challenged movements; find that the challenged rates exceed the regulatory floor; and, per the parties' stipulation, prescribe the maximum lawful rate at the regulatory floor until the end of 2015. UP is ordered to reimburse the shipper for amounts previously collected above that level, together with interest to be calculated in accordance with 49 CFR 1141. UP is also ordered to establish and maintain rates for movements of the issue traffic that do not exceed the maximum reasonable rates prescribed by this decision.

This decision applies our 2006 cost of capital determination in Railroad Cost of Capital - 2006, STB Ex Parte No. 558 (Sub-No. 10) (STB served April 15, 2008). URCS uses this cost-of-capital figure to calculate the variable cost of the issue movements, and the figure is therefore instrumental in setting the maximum reasonable rates prescribed herein. Using the 2006 figure, we have estimated that the reparations with interest due to KCPL for 2006 are approximately $2.9 million, an 8.3% reduction from the total transportation charge KCPL incurred that year. We estimate that the total relief KCPL will obtain from this order – including both reparations and the lower prescribed rate through 2015 – will approximate $30 million. Roughly half of that relief is attributable to our decision to use a Capital Asset Pricing Model (in lieu of a single-stage Discounted Cash Flow model) to determine the cost of capital for 2006.

The record does not, however, provide the data needed to calculate precisely the total amount of reparations due to the shipper, as we only have information from the first quarter of 2006 through the first quarter of 2007. Following our standard practice in such circumstances, the parties are to calculate the total amount of reparations and interest due, in accordance with this decision. If they cannot agree, the parties should bring the dispute to our attention for prompt resolution.

BACKGROUND

By complaint filed on October 12, 2005, KCPL challenges the reasonableness of the rates charged by UP for transportation of coal from mines in the PRB[3] to Montrose. UP, which has sole control over the rates, carries the shipments to Kansas City, MO (a distance of between 754

---

[2] KCPL participated as a member of the Western Coal Traffic League.

[3] For the time period covered by the evidence, KCPL shipped coal from the following five mines located on the Orin Subdivision: Belle Ayr, Black Thunder, Black Thunder South, Caballo, and Jacobs Ranch.

and 786 miles, depending upon the mine). From there, its interline partner Missouri & Northern Arkansas Railroad (MNA) carries the shipments the remaining 154 miles to Ladue, MO, over lines leased from UP.

Prior to this dispute, PRB coal was transported to Montrose pursuant to a series of contracts, the last of which was a contract with UP expiring on December 31, 2005. UP declined to negotiate another rail transportation contract with KCPL and established the rates and service terms for coal shipments to Montrose in Item 4140 of Circular 111. Circular 111 contains two classes of rates. One class, referred to as Option 1, specifies no term or volume requirement. The second class, referred to as Option 2, contains commitments from both parties for term, volume, rates, and service. The Option 1 rates are higher than the Option 2 rates for the same movement, and the Option 2 rates increase for each year of the 3-year term of the Circular.[4] Item 4140 includes an annual volume cap of 2.1 million tons of coal that KCPL may tender under the Option 2 rates.[5]

KCPL executed the Volume Commitment Certificate required for shipping coal under Option 2, while at the same time advising UP that it was reserving the right to challenge the rates contained therein before the Board. In its complaint, KCPL challenges all of the Circular 111 rates to Montrose as unreasonably high. KCPL also maintains that the Option 2 volume cap constitutes an unreasonable practice in violation of 49 U.S.C. 10702.[6]

On February 27, 2006, we held this proceeding in abeyance so that we could consider various recurring methodological issues that had been raised or were implicated in pending rate cases. <u>See</u> <u>Major Issues in Rail Rate Cases</u>, STB Ex Parte No. 657 (Sub-No. 1), <u>et</u> <u>al.</u> (STB served Feb. 27, 2006). We invited parties to the pending case to comment on the new rules and whether, if adopted, they should be applied to the pending cases. Both UP and KCPL, as a member of the Western Coal Traffic League, participated in that rulemaking. On October 30, 2006, we issued final rules and announced our decision to apply those new rules to all pending cases. <u>See</u> <u>Major Issues</u> at 75-76.

The parties filed their opening evidence on July 30, 2007, and their reply evidence on August 20, 2007. KCPL's reply included a request to strike evidence and argument by UP, and on September 10, 2007, UP filed a separate reply in opposition to that request.

---

[4] In a decision served July 27, 2006, we directed the parties to submit briefs on the threshold issue of whether the Board has jurisdiction over the Option 2 rates or whether they are contract rates governed by 49 U.S.C. 10709. Based on the parties' submissions and the circumstances of this case, we asserted jurisdiction over the challenged rates, in a decision served March 29, 2007.

[5] Circular 111, Item 4140-C, Exhibit B.

[6] KCPL Open. Narr. I-24-27; KCPL Reply Narr. I-16.

DISCUSSION AND CONCLUSIONS

For the reasons discussed below, we find that the challenged rates are unreasonably high, and we prescribe the maximum lawful rate levels through the end of 2015. However, we find the unreasonable practice claim to be without merit.

1. Unreasonable Rate Claim

We can consider the reasonableness of a challenged rail rate only if the carrier has market dominance over the traffic involved. 49 U.S.C. 10701(d)(1), 10707(b), (c). Market dominance is "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies." 49 U.S.C. 10707(a). However, a carrier is not considered to have market dominance if the revenue produced by the rate is less than 180% of its variable cost of providing the service. 49 U.S.C. 10707(d)(1)(A). That statutory 180% R/VC level is also the floor for any rate relief. Burlington N.R.R. v. STB, 114 F.3d 206, 210 (D.C. Cir. 1997). Where a railroad has market dominance, its transportation rate must be reasonable. 49 U.S.C. 10701(d)(1), 10702. The Board's general standards for judging the reasonableness of rail freight rates are set forth in Guidelines, as modified in Major Issues. If, after a full hearing, we find a challenged rate to be unreasonable, we will order the railroad to pay reparations to the complainant, 49 U.S.C. 11704(b), and may prescribe the maximum rate the carrier can charge, 49 U.S.C. 10704(a)(1).

In this case, the parties have agreed to a stipulation that there is not effective competition from other carriers or modes of transportation for the transportation, and that the challenged rates exceed the stand-alone cost constraint.[7] Accordingly, the only disputed issue is whether the revenues produced by the challenged rates exceed 180% of the variable costs of providing the transportation.[8] Both parties have submitted data (including the operating characteristics) for 5 quarters for movements from five PRB mines (the first quarter of 2006 through the first quarter of 2007).[9] KCPL has also submitted R/VC calculations for the second quarter of 2007, derived from the first quarter of 2007, as well as for movements from additional mines.[10]

We resolve the dispute over the 180% R/VC calculation in three parts. We first address how to calculate the challenged rates. We then address how we calculate the variable cost of each challenged movement, using unadjusted 2006 URCS. Finally, we address how to index the variable cost calculations to the relevant quarters. As shown in the Appendix, we find that the

---

[7] Joint Stipulation and Procedural Schedule 1-2.

[8] Compare KCPL Open. Narr. I-12-13 with UP Open. Narr. I-3.

[9] UP Open. Narr. Exhibit A; KCPL Open. Narr. II-A-4-5.

[10] KCPL Reply. Narr. II-A-4-8.

revenues produced by the challenged rates exceed 180% of the variable cost of providing the transportation to Montrose.

A. Challenged Rates

Rates for the 5 quarters consist of the Circular 111 base rate together with the applicable fuel surcharge rate for each quarter. The lowest Circular 111 base rate for the four quarters in 2006 was $14.26 per ton, while the base rate for the first quarter of 2007 was $14.83. The fuel surcharges, which were expressed as a percentage of the Circular 111 base rate, ranged from 17.25% to 23.25% in those 5 quarters. The total revenues for the 5 quarters are shown in **Table 1** below.

Table 1
STB Total Revenue Levels

Quarter &Year	Circular 111 Rate Per Ton	Fuel Surcharge Percentage	Fuel Surcharge Amount	Total Revenue Per Move
1Q2006	$14.26	17.25%	$2.46	$16.72
2Q2006	$14.26	18.75%	$2.67	$16.93
3Q2006	$14.26	23.25%	$3.32	$17.58
4Q2006	$14.26	21.50%	$3.07	$17.33
1Q2007	$14.83	18.00%	$2.67	$17.50

B. Variable Costs

Both parties used the URCS Phase III program in developing the variable costs for the movements at issue. URCS is the Board's general purpose costing system used to estimate variable and total unit costs for Class I railroads. URCS reflects the extent to which different types of costs incurred in the rail industry change in proportion to changes in output. Each year, the Board uses the cost and operating statistics obtained from each Class I carrier's annual report (STB Form R-1), carload waybill sample, annual report of cars loaded and terminated (STB Form CS-54), and report of freight commodity statistics (STB Form QCS) to determine the URCS system-average variable costs for that carrier. There are three phases of the URCS program. In Phase I, the Board collects the data and performs Special Studies (Variability Study, Switching Study, etc.). In Phase II, the Board calculates the system-average variable unit costs for a carrier, based on the system data and cost relationships developed in Phase I. In Phase III, those system-average unit costs are applied to a specific movement, based on various operating characteristics of the movement, to determine the variable costs of that movement.

The URCS variable cost calculation requires the input of nine operating characteristics: (1) the railroad; (2) loaded miles (which should include loop track miles); (3) shipment type (originated and terminated (local), originated and delivered, received and delivered (bridge), received and terminated); (4) number of freight cars; (5) tons per car; (6) commodity; (7) type of movement (single, multiple, unit); (8) car ownership (railroad or private); and (9) type of car.[11] **Table 2** shows those inputs for one of the quarters. The parties agree on the nine inputs to the URCS Phase III program for each mine in each of the 5 quarters.

Table 2
Operating Characteristics - 1Q06

Operating Characteristic	**Belle Ayr**	**Black Thunder**	**Black Thunder South**	**Caballo**	**Jacobs Ranch**
1. Railroad	UP/MNA	UP/MNA	UP/MNA	UP/MNA	UP/MNA
2. Miles	785/154	761/154	754/154	786/154	768/154
3. Move Type	Unit Train	Unit Train	Unit Train	Unit Train	Unit Train
4. Cars per Train	112	113	113	113	117
5. Tons per Car	119.8	119.5	121.7	115.2	120.7
6. Car Type	Plain Gondola	Plain Gondola	Plain Gondola	Plain Gondola	Plain Gondola
7. Car Owner	Private	Private	Private	Private	Private
8. Commodity	Coal	Coal	Coal	Coal	Coal
9. Shipment Type	UP - Orig/Del MNA - Rec/Term	UP - Orig/Del MNA - Rec/Term	UP - Orig/Del MNA - Rec/Term	UP - Orig/Del MNA - Rec/Term	UP - Orig/Del MNA - Rec/Term

Under 49 U.S.C. 10707(d)(1)(B), variable costs are to be determined using a "carrier's unadjusted costs, calculated using the Uniform Rail Costing System cost finding methodology . . . and indexed quarterly . . ., with adjustments specified by the Board" (emphasis added). In past rate cases, the Board has allowed movement-specific adjustments to the variable costs produced by URCS. In Major Issues, we changed that policy and announced that movement-specific adjustments would no longer be allowed.

[11] KCPL challenges the rates for shipment of both aluminum and steel rail cars, arguing that some coal is shipped under the challenged rates in steel cars. KCPL Open. Narr. II-A-2. However, our URCS Phase III program does not differentiate between steel and aluminum cars, and KCPL has not provided persuasive evidence to support its argument. Our analysis will therefore consider only the challenged rates for aluminum cars.

Both KCPL and UP nonetheless argue for selective movement-specific adjustments in this case.[12] UP further argues that, because the Major Issues rules were not in effect when it set the rates, application of those rules to this complaint would have an impermissible retroactive effect.[13] However, in Major Issues, neither party objected to application of the proposed rules to this proceeding when given the opportunity to do so, and any argument that Major Issues should not apply here is therefore waived, including the retroactivity argument raised by UP.[14] As we explained in Major Issues, the litigation over movement-specific adjustments is inordinately complex, time consuming, and expensive, and the inclusion of such adjustments does not necessarily result in more reliable results than using the URCS system averages.[15] We also concluded that the costs and complexity of such adjustments to URCS conflicts with what Congress intended in adopting the 180% R/VC limitation on Board rate review: to create an administratively quick and easy-to-determine regulatory safe harbor for the railroads.

Accordingly, we will adhere to the policy announced in Major Issues of relying solely on the unadjusted variable cost figures generated by URCS, using the nine movement-specific factors inputted into Phase III of URCS, with the adjustments set forth in Review of the General

---

[12] KCPL would have us include additional inputs for specific tare weights and exclude both terminal switching costs and private car payments. KCPL Open. Narr. I-15-19, 22-23. UP would have us include the per-car payment that it makes to MNA as a variable cost rather than a division of revenue. UP Open. Narr. I-4-I-15. As a result of this treatment, UP would also have us include additional locomotive and fuel costs associated with MNA's service. Id. Exh. A. Each party objects to the adjustments advocated by the other.

KCPL maintains that the transportation from the PRB to Montrose is an interline movement and treats the payments made by UP to MNA as a division of revenues between connecting line haul carriers rather than as a component of UP's variable cost. KCPL Open. Narr. I-22; KCPL Reply Narr. I-3-13. KCPL would therefore cost the movement using UP's costs under URCS for the UP operation between the PRB mines and Kansas City, and using Western Regional URCS costs for the MNA operation between Kansas City and Montrose. KCPL Reply Narr. I-15. As an alternative, KCPL suggests calculating the variable costs by treating the Montrose movement as a single-line UP movement and using UP URCS costs for the entire movement, which it maintains produces a similar result. KCPL Reply Narr. I-13-15.

[13] UP Reply Narr. I-9.

[14] UP has failed to explain its inconsistent position that, while KCPL should be bound to the new policy adopted in Major Issues, UP cannot be precluded from making a movement-specific adjustment that favors the carrier.

[15] Major Issues at 60.

Purpose Costing System, 2 S.T.B. 659 (1997).[16] We will not consider the evidence submitted by either party seeking selective movement-specific adjustments.

Because the Montrose movement is an interline movement, we use UP's system-average URCS costs to determine the variable costs of the UP portion of the movement (between the PRB and Kansas City), and Western Regional URCS costs for the variable costs of the MNA portion of the movement (between Kansas City and Montrose). This is consistent with established agency policy. Because the Board does not require Class II or Class III railroads to collect the requisite annual data necessary to formulate URCS costs, URCS develops costs only for Class I railroads.[17] Thus, as a proxy for the variable costs of a Class II or Class III rail carrier, the Board uses a composite average of all of the Class I carriers operating in that region of the country.[18] Therefore, we reject KCPL's alternate suggestion to use UP's URCS costs for the entire movement from the PRB to Montrose.

Because the Board had not released its 2006 URCS data before the parties submitted their evidence, both parties developed their own versions of UP and Western Regional 2006 URCS costs.[19] We have since released 2006 URCS data, which employs our most recent 2006 cost-of-capital finding. We will use these data in this case.

---

[16] Those adjustments include the so-called "270" volume shipment adjustments, the make-whole adjustments, rail trailer-on-flatcar/container-on-flatcar adjustments, and RoadRailer adjustments. In addition, the circuity factor is always set to one when actual miles are used to calculate the variable costs.

[17] A Class I railroad is one with annual operating revenues of at least $250 million, in 1991 dollars. A Class II railroad is one with annual operating revenues of less than $250 million but in excess of $20 million, in 1991 dollars. A Class III railroad is one with annual operating revenues of $20 million or less, in 1991 dollars. 49 CFR 1201.

[18] See Uniform Railroad Costing System, 5 I.C.C.2d 894, 917-918 (1989). See also Variable Costs in Rate Complaint Proceedings—Non-Class I RR., 6 S.T.B. 798, 801-804 (2003) (announcing policy to rely upon regional URCS costing data in determining variable costs for non-Class I railroads). Western Regional URCS is an average of the costs of UP, BNSF Railway Company, Kansas City Southern Railway Company (KCS), and Soo Line Railroad Company (an affiliate of Canadian Pacific Railway Company).

[19] The parties did not agree on how to estimate the 2006 URCS data. UP adjusted the URCS return-on-investment costs by excluding the debt service expenses recorded in its R-1 Report for Account 76 (Interest During Construction) and substituting Account 90 (Construction in Progress) expenses, which it argues fully reflects capital costs (both debt and equity), rather than only the debt costs associated with that investment. UP Open. Narr. II-2. UP also used 2006 cost-of-capital data developed by the Association of American Railroads. KCPL did not adjust the Account 76 and 90 expenses, and it used the Board's 2005 cost-of-capital determination. KCPL Open. Narr. I-19.

C. Indexing

The parties disagree on how to index fuel costs. KCPL indexed the URCS system-average fuel costs, whereas UP used a fuel index adjustment to reflect its own actual fuel consumption and prices.[20] UP, in its calculations for the Western Region base year, relied on a figure listed under "Depreciation—MOW—Running" for KCS of $142,860.[21] However, the actual number in the KCS R-1 was $42,860.[22] We use KCPL's indexing process, which follows Board indexing procedures and accurately reflects R-1 data, and AAR Railroad Cost Indexes for UP and the Western Region. Base year 2006 URCS costs are indexed to the various issue quarter levels. See **Table 3**.

Table 3
Composite Cost Indices

Quarter	UP	Western Region
1Q 2006	0.97767618	0.97733020
2Q 2006	1.00631035	1.00660207
3Q 2006	1.02751232	1.02813552
4Q 2006	0.98824078	0.98767094
1Q 2007	0.98774983	0.98700612

D. Results

As shown in the **Appendix**, we find that the revenues produced by the challenged rates in the period analyzed here exceeded 180% of UP's variable costs of providing the transportation. Pursuant to the stipulation of the parties, we therefore prescribe the maximum rate that can be charged for coal moving from the PRB to Montrose at the 180% R/VC level, as calculated here. Only the R/VC ratios for 2006 and the first quarter of 2007 are set forth in the appendices. We do not have the necessary information to compute the rate floor for later periods. The parties should therefore calculate the rate floor for later periods in a manner consistent with the procedures and findings contained in this decision.

We award reparations to KCPL for that portion of the transportation charges collected by UP after the expiration of the contract that exceeds the 180% R/VC figure, together with interest to be calculated under our rules in 49 CFR 1141. UP is also directed to establish and maintain

[20] KCPL Reply Narr. II-A-11-12; UP Reply Narr. I-9-10.

[21] UP Open. Workpapers "06 BASE 06 &1Q07 QTRS-IE3-INDEX."

[22] KCS 2006 Annual Report Form R-1.

common carrier rates for the movements of coal from the PRB to Montrose that do not yield revenues in excess of the 180% R/VC limit set here through the end of 2015.

2. Unreasonable Practice Claim

KCPL maintains that UP's unilateral imposition of an annual volume cap of 2.1 million tons on the amount of coal that KCPL could tender under the Circular 111 Option 2 rates constitutes an unreasonable practice in violation of 49 U.S.C. 10702.[23] KCPL argues that this volume limitation seriously jeopardizes its ability to fully fuel Montrose, one of its baseload generating plants, and skirts UP's common carrier obligation.[24] UP maintains that it was not obligated to hold out the same service commitment for all coal shipped by KCPL, particularly not for substantially more coal than KCPL has shipped in the past.[25] UP states that if KCPL wants to ship more than the specified volume of coal, KCPL may request Option 1 rates.[26] Finally, UP argues that its volume cap, which was greater than KCPL's average volume of coal received over the preceding 3 years, was reasonable in light of UP's capacity concerns.[27]

---

[23] KCPL Open. Narr. I-24-27; KCPL Reply Narr. I-16.

[24] KCPL Open. Narr. I-26-27.

[25] UP Reply Narr. I-2. On reply, KCPL argues that any arguments or evidence that UP presents in its reply to address the unreasonable practice claim should be stricken, because KCPL did not have an opportunity to respond. KCPL Reply Narr. I-16-17. KCPL argues that UP was placed on notice of the unreasonable practice allegation by virtue of its complaint and a December 29, 2005 letter to counsel for UP, and that UP should not be permitted to present new arguments for the first time in its final filing. Id. at I-16. UP opposed the motion to strike on September 10, 2007, arguing that KCPL had not advanced the unreasonable practice argument in its complaint, and that the volume limitation was one of numerous unreasonable practice claims that KCPL stated it was contemplating in the December 29, 2005 letter. See UP Reply in Opposition to Motion to Strike 1-2.

We will deny KCPL's motion to strike. The volume limitation was not mentioned as the subject of an unreasonable practice claim in the complaint, and we cannot find that UP should have been put on notice regarding this specific claim from the December 29, 2005 letter. Therefore, we find that UP's evidence and argument were a permissible reply to KCPL's unreasonable practice claim, which was raised for the first time with specificity in KCPL's opening evidence.

[26] UP Reply Narr. I-11.

[27] UP Reply Narr. I-11-12.

While we have expressed reservations about the type of pricing mechanism contained in Circular 111,[28] KCPL has failed to demonstrate that the volume limitation for Option 2 prices (as opposed to other features of the agreement) constitutes an unreasonable practice. UP does not have an obligation to provide unlimited service at a particular price. KCPL's challenge to UP's volume cap is essentially a challenge to a higher rate for service over a certain volume level. While the Board has broad authority over the reasonableness of a railroad's practices under 49 U.S.C. 10702(2), what is essentially a rate dispute should not be addressed via a claim of unreasonable practice. See Union Pacific R.R. v. ICC, 867 F.2d 646 (D.C. Cir. 1989). Moreover, because we are prescribing the maximum rates at the 180% R/VC threshold under either Option 1 or Option 2 of Circular 111, the issue is moot, as UP will be barred from setting any rate over that level for the prescription period, even if KCPL ships more than 2.1 million tons of coal from the PRB in a given year.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Defendant shall, within 60 days, establish and maintain rates for the issue traffic that do not exceed the maximum reasonable rates prescribed by this decision until the end of 2015.

2. Defendant shall pay reparations and interest, in accordance with this decision, for all shipments moving after the expiration of the contract between the parties and prior to the establishment of a reasonable rate pursuant to paragraph 1.

3. The unreasonable practice claim is denied.

4. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary

---

[28] See Interpretation of the Term "Contract" in 49 U.S.C. 10709, STB Ex Parte No. 669 (STB served Mar. 29, 2007).

APPENDIX A
Comparative R/VC Percentages for the Traffic Moving to Montrose Station (1Q06-1Q07)

MINE	KCPL	UP	STB
BELLE AYR			
1Q 2006	214.64%	155.20%	191.71%
2Q 2006	209.01%	155.04%	189.87%
3Q 2006	213.45%	159.69%	193.58%
4Q 2006	218.66%	160.54%	198.23%
1Q 2007	220.43%	159.60%	198.45%
BLACK THUNDER			
1Q 2006	219.31%	158.26%	196.16%
2Q 2006	214.64%	158.14%	194.21%
3Q 2006	218.84%	162.95%	198.15%
4Q 2006	210.99%	161.27%	198.30%
1Q 2007	194.09%	157.22%	191.02%
BLACK THUNDER SOUTH			
1Q 2006	219.80%	160.87%	199.21%
2Q 2006	218.47%	159.67%	196.21%
3Q 2006	220.99%	163.96%	199.43%
4Q 2006	229.45%	164.70%	204.22%
1Q 2007	206.05%	159.58%	195.49%
CABALLO			
1Q 2006	216.35%	151.75%	188.19%
2Q 2006	210.12%	155.29%	190.27%
3Q 2006	212.78%	159.21%	193.23%
4Q 2006	218.71%	160.60%	198.34%
1Q 2007	219.94%	159.09%	197.86%
JACOBS RANCH			
1Q 2006	216.96%	158.69%	196.63%
2Q 2006	212.85%	157.06%	192.75%
3Q 2006	215.97%	160.70%	195.23%
4Q 2006	207.75%	159.97%	196.01%
1Q 2007	208.47%	159.00%	195.57%

APPENDIX B
STB RESTATEMENT
R/VC Ratios

Mine & Quarter	Option 2 Rate	Fuel Surcharge	Total Revenue	UP Var. Cost	MNA Var. Cost	Total Var. Cost	R/VC
BELLE AYR							
1Q 2006	$14.26	$2.46	$16.72	$7.02	$1.70	$8.72	191.71%
2Q 2006	$14.26	$2.67	$16.93	$7.18	$1.74	$8.92	189.87%
3Q 2006	$14.26	$3.32	$17.58	$7.31	$1.77	$9.08	193.58%
4Q 2006	$14.26	$3.07	$17.33	$7.04	$1.70	$8.74	198.23%
1Q 2007	$14.83	$2.67	$17.50	$7.10	$1.72	$8.82	198.45%
BLACK THUNDER							
1Q 2006	$14.26	$2.46	$16.72	$6.82	$1.70	$8.52	196.16%
2Q 2006	$14.26	$2.67	$16.93	$6.98	$1.74	$8.72	194.21%
3Q 2006	$14.26	$3.32	$17.58	$7.10	$1.77	$8.87	198.15%
4Q 2006	$14.26	$3.07	$17.33	$6.99	$1.75	$8.74	198.30%
1Q 2007	$14.83	$2.67	$17.50	$7.31	$1.86	$9.16	191.02%
BLACK THUNDER SOUTH							
1Q 2006	$14.26	$2.46	$16.72	$6.71	$1.68	$8.39	199.21%
2Q 2006	$14.26	$2.67	$16.93	$6.90	$1.73	$8.63	196.21%
3Q 2006	$14.26	$3.32	$17.58	$7.04	$1.77	$8.81	199.43%
4Q 2006	$14.26	$3.07	$17.33	$6.78	$1.70	$8.48	204.22%
1Q 2007	$14.83	$2.67	$17.50	$7.13	$1.82	$8.95	195.49%
CABALLO							
1Q 2006	$14.26	$2.46	$16.72	$7.15	$1.74	$8.88	188.19%
2Q 2006	$14.26	$2.67	$16.93	$7.17	$1.73	$8.90	190.27%
3Q 2006	$14.26	$3.32	$17.58	$7.32	$1.77	$9.10	193.23%
4Q 2006	$14.26	$3.07	$17.33	$7.03	$1.70	$8.74	198.34%
1Q 2007	$14.83	$2.67	$17.50	$7.12	$1.72	$8.84	197.86%
JACOBS RANCH							
1Q 2006	$14.26	$2.46	$16.72	$6.82	$1.69	$8.50	196.63%
2Q 2006	$14.26	$2.67	$16.93	$7.04	$1.74	$8.79	192.75%
3Q 2006	$14.26	$3.32	$17.58	$7.22	$1.78	$9.00	195.23%
4Q 2006	$14.26	$3.07	$17.33	$7.08	$1.76	$8.84	196.01%
1Q 2007	$14.83	$2.67	$17.50	$7.16	$1.79	$8.95	195.57%